

REMARKS

Reconsideration and withdrawal of the objections and rejections of the applications are respectfully requested in view of the remarks herewith, which place the application into condition for allowance. The Examiner is thanked for considering claims 23, 24, 27 and 28 to be allowable.

Pursuant to the provisions of 37 C.F.R. §§ 1.17(a) and 1.136(a), Applicants petition the Assistant Commissioner to extend the time period for Applicants to respond to the outstanding Office Action by one (1) month, i.e., up to and including September 15, 2003. A check for \$110.00 is enclosed with this Amendment. Applicants authorize the Assistant Commissioner to charge any additional fee for consideration of this amendment, or credit any overpayment, to Deposit Account No. 50-0320.

Claims 13 to 15, 18, 20 to 22, 25, 26 stand rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over Ruegg et al., US 2001/0044382 ("Ruegg"). Applicants urge that as Ruegg is not a competent reference against the present application as the PCT application was filed before November 29, 2000. Accordingly, it is urged that the rejection is improper and its withdrawal is requested.

Ruegg is based on an application filed pursuant to 35 USC §111(a) and is a continuation of International application PCT/EP99/04374, copy of the front page of this document is attached. PCT/EP99/04374 claims priority to the Swiss patent application 1373/98, which has a filing date of June 24, 1999. Ruegg entered national stage on December 26, 2000, a date that is at least one year after the U.S. filing date of the present application.

The Examiner asserts that Ruegg is a competent reference against the present application because the filing date of PCT/EP99/04374 is June 24, 1999. Applicants respectfully disagree.

Applicants urge that Ruegg is not prior art since it was filed before November 29, 2000 and, therefore, not entitled to a prior art date under 35 USC 102(e)(1).

Example 9 of the Examination Guidelines for Applying References Under 35 U.S.C. §102(e) presents a fact pattern that is analogous to that of the instant application (see MPEP 706.02(f)). Example 9 states that an international application that is filed prior to November 29, 2000 does not obtain a prior art date under 35 USC §102(e)(1); the document in Example 9 is prior art only under 35 USC §§102(a) or (b) of the Statute. Similarly, Ruegg is not prior art under 35 USC §102(e)(1) and is potentially prior art only under 35 USC §§102(a) or (b). Ruegg was published on January 6, 2000, a date which is later than the August 10, 1999 U.S. filing date of the present application. Hence, it cannot be prior art under 35 USC §102 (a) or (b). Thus, Ruegg is not prior art against the present application and the rejection should be withdrawn.

Accordingly, in view of the foregoing, reconsideration of this rejection is requested and favorable action is solicited.

Respectfully submitted,

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